IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 405 OF 2006
IN.
COMPANY PETITION NO. 740 OF 2005

Rechard Joseph D'Souza. ... Appellant.
Versus.
Tata Consultancy Services Ltd
and
Tata Infotech Ltd. ... Respondents.

Appellant-in-person.

Ms.Dipti Gandhi i/by M/s.AZB Partners for the Respondents.

CORAM : KSHITIJ R.VYAS, C.J., &
ABHAY S.OKA, J.

DATE : June 13, 2006.

P.C.:

1. The Appellant appearing in person challenged the order dated 27th January 2006 passed by the learned Company Judge in Company Petition No.740 of 2005 whereby the scheme of amalgamation of Tata Infotech Ltd. with Tata Consultancy Services Ltd. has been granted. The Appellant appearing in person has been heard.

2. Before the learned Company Judge the Appellant contended that the transferor-Company i.e. Tata Infotech Ltd. has filed suit for recovery of various amounts from the Appellant wherein the Appellant also filed counterclaim. The Appellant also initiated criminal proceedings against the transferor-company and

its Directors which are pending. The Company Judge recorded the apprehension of the Appellant that the proposed merger was to prejudice the proceedings initiated by the Appellant including the criminal proceedings against the directors of the transferor-company and the learned Company Judge observed that the proceedings adopted and to be adopted cannot be affected by the said merger. In fact a statement was made on behalf of the transferor-company by the learned Counsel as recorded by the learned Company Judge reads as under:

> "Mr.Dwarkadas, on taking instructions from the Petitioners, agrees and undertakes on behalf of the transferor and the transferee companies and their directors to the following:
>
> i) Not to contend that by virtue of the merger the rights of the said D'Souza in the civil and criminal proceedings have been adopted and which may hereafter be adopted, are adversely affected in any manner whatsoever.
>
> ii) He further undertakes on behalf of the transferee company to satisfy any decree that may be passed in favour of the said D'Souza without requiring him to adopt

execution proceedings for the same.

At this stage we may refer to clause 6.1 of the Scheme of Amalgamation, which reads as under:

> 6.1 If any suits, actions and proceedings of whatsoever nature (hereinafter referred to as the "proceedings") by or against the Transferor Company are pending on the Effective Date, the same shall not abate or be discontinued not be in any way prejudicially affected by reason of the amalgamation of the Transferor Company with the Transferee Company or anything contained in the Scheme, but the Proceedings may be continued and enforced by or against the Transferee Company as effectually and in the same manner and to the same extent as the same would or might have continued and enforced by or against the Transferor Company in the absence of the Scheme.

In view of this specific provision, we see no reason for the apprehension as entertained by the Appellant. The Appellant submitted that such a provision in the Scheme of Amalgamation is against the provisions of the Civil as well as Criminal law and against the provisions of

the Companies Act. He further submitted that the impugned amalgamation has violated the human rights and the same will affect the pending proceedings. We see no merits in these submissions. The apprehension expressed by the Appellant will not survive in view of the statements made by the learned Counsel appearing for the Transferor and Transferee companies as recorded by the learned Company Judge in the impugned order. There is no substance in the Appeal and the same is summarily rejected.

CHIEF JUSTICE

ABHAY S.OKA, J.